

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 373-4147**

IN THE MATTER OF:

Docket No. 15-021202 HHS
Case No. [REDACTED]

[REDACTED]
Appellant
_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, upon Appellant's request for a hearing.

After due notice, a hearing was held on [REDACTED] Appellant personally appeared. Appellant's caregiving, [REDACTED] caregiver, appeared as a witness.

Dawn Pline, Appeals Review Officer, represented the Department. [REDACTED] Adult Services Worker (ASW), [REDACTED] Adult Services Supervisor, and [REDACTED] Department Analyst for Provider Enrollment appeared as witnesses on behalf of the Department.

ISSUE

Did the Department properly suspend Appellant's HHS case under the Mandatory Exclusion policy?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Appellant is a [REDACTED] year old male who is a beneficiary of the welfare Medicaid program.
2. At all relevant times, Appellant has had an HHS with the Department since at least [REDACTED] (Exhibit A. 6).
3. Appellant's medical eligibility is not at issue here.
4. On [REDACTED] the Department issued an Advance Negative Action Notice to suspend Appellant's HHS effective [REDACTED] on the grounds that: "A criminal history screen was completed on your current home help provider who was found to have a mandatory exclusion which prevents him from being paid with Medicaid dollars." (Exhibit A.5). Appellant was advised that he needed to find a new home help provider. (Exhibit A.5).

5. On [REDACTED] Appellant filed a Request for an Administrative Hearing with MAHS stating that his provider has been his provider for the last 4 years and that the criminal charge against him happened 15 years ago, and that Appellant would like him to continue. (Exhibit A.4).

CONCLUSIONS OF LAW

The Medical Assistance Program is established pursuant to Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). It is administered in accordance with state statute, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

Home Help Services (HHS) are provided to enable functionally limited individuals to live independently and receive care in the least restrictive, preferred settings. These activities must be certified by a physician and may be provided by individuals or by private or public agencies.

Specific policy from the Home Help Providers policy states in relevant part:

PROVIDER CRITERIA:

Determine the provider's ability to meet the following **minimum** criteria in a face-to-face interview with the client **and** the provider.

The specialist must, at a minimum, have a face-to-face interview with the client, prior to case opening, then every six months in the client's home, at review and redetermination.

PROVIDER INTERVIEW

An initial face-to-face interview must be completed with the home help provider. A face-to-face or phone contact must be made with the provider at the six month review or redetermination to verify services are being furnished.

ASM 135, page 2 of 9. Effective 12-1-2013

On 9/2/14 the Medical Services Administration issued a Bulletin (MSA 14-40) which required in part, criminal background checks for all providers. Applicable to the case here, that bulletin states in part:

Beginning October 2, 2014, all new provider applicants must fully meet the provision of this bulletin before being enrolled to provide services. (Exhibit A.15).

ASM 125 requires that all providers be enrolled in the state computer system, and, obtain an enrollee ID number prior to payments beginning. ASM, 135.

On July 32, 2014, the Medical Services Administration of the Michigan Department of Community Health, the Department herein, issued Bulletin Number MSA 14-31 regarding home help providers and MI Choice Waiver Agencies. The Subject deals with criminal history screening for providers who receive Medicaid dollars. This Bulletin states in part:

This bulletin provides additional information about the Michigan Department of Community Health's (MDCH) implementation of Medicaid provider screening and enrollment requirements of Sections 6201, 6401, and 6501 of the Affordable Care Act (ACA) and state policy as reflected in the General Information for Providers Chapter, Section 2 – Provider Enrollment, in the Michigan Medicaid Provider Manual. Section 1128(a) of 42 U.S.C.1320a-7 (the Social Security Act) prohibits individuals or entities from participating in programs funded under the Act if they have been convicted of any of the Mandatory Exclusion offenses outlined below. The Act permits the State to apply additional permissive restrictions; however those will be covered in a subsequent bulletin. This policy applies to all providers of personal care services that are delivered through the Michigan Medicaid Home Help program and the MI Choice waiver program. For the purposes of this policy, a provider is any individual providing a direct or indirect program service to a beneficiary or enrollee of the Home Help or MI Choice programs that is reimbursed by Medicaid. This applies to both independent providers of service as well as employees of service agencies. The criminal history screen will be conducted either by MDCH through the provider registration process or as assigned by contract with the MI Choice waiver agencies. Screenings under this policy will not require fingerprinting of the individual being screened and will be conducted through available public record databases.

Mandatory Exclusions: Providers (any individual or entity) **MUST** be screened for and, as required by the State of Michigan, **MUST** disclose the following excludable convictions. Any applicant or provider found to meet one of these four categories is prohibited from participating as a service provider for Medicaid or the Home Help program. The mandatory exclusion categories are:

1. Any criminal convictions related to the delivery of an item or service under Medicare (Title XVIII), Medicaid (Title XIX) or other state health care programs (e.g., Children's Special Health Care Services, Healthy Kids), (Title V, Title XX, and Title XXI)
2. Any criminal convictions under federal or state law, relating to neglect or abuse of patients in connection with the delivery of a health care item or service
3. Felony convictions **occurring after August 21, 1996**, relating to an offense, under federal or state law, in connection with the delivery of health care items or services or with respect to any act or omission in a health care program (other

than those included in number 1 above) operated by or financed in whole or in part by any federal, state, or local government agency, of a criminal offense consisting of a felony relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct

4. Felony convictions **occurring after August 21, 1996**, under federal or state law, related to unlawful manufacture, distribution, prescription, or dispensing of a controlled substance

MSA 14-31 Page 2 of 3

For the purposes of the laws mentioned above, an individual or entity is considered to have been convicted of a criminal offense when:

- A judgment of conviction has been entered against the individual or entity by a federal, state, or local court, regardless of whether there is an appeal pending or whether the judgment of conviction or other record relating to criminal conduct has been expunged,
- A finding of guilt against the individual or entity by a federal, state, or local court,
- A plea of guilty or nolo contendere by the individual or entity has been accepted by a federal, state, or local court, or
- An individual or entity that has entered into participation in a first offender, deferred adjudication, or other arrangement or program where judgment of conviction has been withheld.

Criminal History Screening: All current and potential providers covered under this policy must agree to a criminal history screening. Such approval will be indicated through the submission of a signed MSA-4678 Medical Assistance Home Help Provider Agreement, a properly submitted online program provider application, or other authorized application approved by the department. Valid identifying information, including name, home address, date of birth, and Social Security Number, must be provided by all providers and applicants. The screening must be completed and passed before a provider will be allowed to provide services under a Medicaid program. Subsequent screening will be administered as described below. Approved and existing individual providers will be periodically reviewed and rescreened by MDCH.

Program-approved provider agencies are required to assure that a criminal history screening of all individuals in their employment providing in-home services has been conducted. Such agencies are also required to provide similar screenings on the following agency personnel:

- Any individual with an ownership interest in the agency,
- Any individual providing services on behalf of the agency or individual who has direct access to a client, patient or resident or to a client's, patient's or resident's property, financial information, medical records, treatment information, or any other identifying information, or

- Any person providing services to client, patient or resident for which the agency is reimbursed under Medicaid.

All providers will be required to revalidate their Medicaid enrollment information for the purposes of subsequent criminal history screenings a minimum of once every three years, or more often if requested by MDCH. MDCH will notify providers when revalidation is required. **Providers are reminded that they must notify MDCH within 10 business days of any change to their enrollment information. Failure to do so will result in termination of provider enrollment.**

Exclusions: For any provider found to be in violation of any of the four mandatory exclusions listed above, MDCH shall terminate or deny enrollment in the Michigan Medicaid program. Although the Social Security Act stipulates a minimum exclusionary period for these offenses under of 42 U.S.C.1320a-7(c)(3)(B), the exclusionary period under this policy will be consistent with that set for other types of Medicaid providers under MCL 333.20173. Termination of enrollment means a provider's billing privileges have been revoked and all appeal rights have been exhausted or the timeline for appeal has expired. Denial of enrollment means the provider agreement will not be approved for participation in the Medicaid program. The basis for termination or denial of enrollment includes, but is not limited to:

- Failure to submit timely and accurate information,
- Failure to cooperate with MDCH screening methods,
- Any criminal convictions related to the delivery of an item or service under Medicare (Title XVIII), Medicaid (Title XIX) or other state health care programs (e.g., Adult Benefit's Waiver, County Health Plan, Children's Special Health Care Services, Healthy Kids), (Title V, Title XX, and Title XXI),
- Termination on or after January 1, 2011, under Medicare or the Medicaid program or Children's Health Insurance Program (CHIP) of any other state,
- Falsification of information provided on the provider agreement, or
- Inability to verify a provider applicant's identity.

Here, unrefuted evidence of record is that Appellant's provider had a felony conviction, and that he falls under the mandatory exclusion section. Unfortunately for Appellant, his provider does not fall under the exclusion(s) where he (the Appellant) can waive the exclusion, as the conviction falls under the mandatory exclusion.

Administrative Law Judges (ALJ) have no jurisdiction to overrule laws, statutes, or policies. The jurisdiction of an ALJ is to determine if the facts fall under the applicable law or policy.

Here, the Department's evidence supports the suspension of Appellant's case pursuant to the case action of [REDACTED]. As such, this ALJ must uphold the decision.

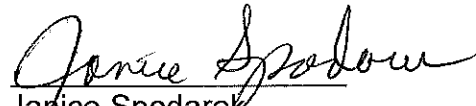
[REDACTED]
Docket No. 15-021202 HHS
Decision and Order

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department's [REDACTED] suspension of Appellant's HHS was correct based on the available evidence and thus,

IT IS THEREFORE ORDERED THAT:

The Department's determination is hereby **AFFIRMED**.


Janice Spodarek
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of
Health And Human Services

Date Mailed: [REDACTED]

JS/cg

cc: [REDACTED]

***** NOTICE *****

The Michigan Administrative Hearing System may order a rehearing on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. The Michigan Administrative Hearing System will not order a rehearing on the Department's motion where the final decision or rehearing cannot be implemented within 90 days of the filing of the original request. The Appellant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt of the rehearing decision.